

**SEDGWICK COUNTY
BOARD OF ZONING APPEALS
MINUTES
MAY 6, 2003**

The Sedgwick County Board of Zoning Appeals meeting was held at 3:30 p.m. on Tuesday, May 6, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following members were in attendance: Chairman, GARY WILEY, JANA MULLEN, AND KATHLEEN GIDEON. The following member was absent: DENNIS GRUENBACHER.

The following Planning Department staff members were in attendance: Secretary, DALE MILLER, Assistant Secretary, SCOTT KNEBEL, and Recording Secretary, ROSE SIMMERING.

The following County staff members were in attendance: GLEN WILTSE, Director, Sedgwick County Code Enforcement. Aaron Blase, Assistant County Counselor.

Triplett, Woolf, Garretson, 2959 N. Rock Road, Suite 300, Wichita, KS 67226 c/o Rachel Pirner is representing the County Board of Zoning Appeals.

WILEY: Calls meeting to order. First order of business would be elect CoBZA officers.

GIDEON moves MULLEN seconds, to elect Gary Wiley as the CoBza Board Chairman.

MOTION CARRIES 3-0.

WILEY: Agenda Item 2, would be the approval of meeting minutes for the following meeting: July 9, 2002.

GIDEON moves WILEY seconds, to approve July 9, 2002 CoBza meeting minutes.

MOTION CARRIES 3-0.

WILEY: Agenda Item 3, BZA2003-09, Appeal of Administrative Interpretation of the County Zoning Administrator pertaining to the non-conforming use status of a mobile home park on property zoned "SF-20" Single-Family Residential, located south of 31st Street South and east of 127th Street East.

KNEBEL, Planning staff: Presents the following report:

At the May 6, 2003 meeting of the Sedgwick County Board of Zoning Appeals, the Board will be asked to hear an appeal of the Zoning Administrator's denial of the registration of a nonconforming use made on March 3, 2003 by Glen Wiltse, Sedgwick County Zoning Administrator. The appeal has been filed by Merlin Troutman, who on February 24, 2003 attempted to register the property located 13601 E. 31st Street S. as a nonconforming 49-lot mobile home park.

Mr. Troutman contends that use of the subject property as a 49-lot mobile home park was established prior to 1985, when Sedgwick County first adopted zoning for the subject property. The zoning of the subject property is "SF-20" Single Family, which does not permit a mobile home park as a use of right, thus necessitating registration of the use as a nonconforming use to allow it to lawfully continue.

Mr. Wiltse denied the registration of the nonconforming use on the basis that aerial photographs of the subject property both prior to and after Sedgwick County adopted zoning for the subject property show that only 39 mobile homes were located on the property. Mr. Wiltse indicated that he would approve the registration of the subject property as a nonconforming 39 lot mobile home park. Therefore, the issue for the Board to decide in this appeal is not whether or not the property is a nonconforming mobile home park; instead, the Board needs to decide how many lots the nonconforming mobile home park contains.

The authority of the Board to hear an appeal of the denial of the registration of a nonconforming use is set forth in Section VII-I.2. of the Unified Zoning Code (UZC) which states:

An aggrieved party may appeal the Zoning Administrator's registration or denial of registration to the Board of Zoning Appeals.

In determining the appeal, the Board must determine if Mr. Wiltse's denial of the nonconforming registration was correct. Unlike variances that come before the Board, neither state law nor the UZC set forth criteria or factors that the Board can use to evaluate whether the Zoning Administrator's decision was correct. Further, the factors set forth in determining if a variance is appropriate generally are not applicable in determining if a decision of the Zoning Administrator is correct.

The UZC does, however, provide the Board with guidance in several areas in the evaluation of appeals. First, Section V-H.6. of the UZC places a presumption of correctness on Mr. Wiltse's decision. The appellant has the burden of persuasion in showing that the decision was in error. Second, Section V-H.6. of the UZC gives the Board the authority to reverse or affirm wholly or partly or modify the decision of the Zoning Administrator. Third, the following UZC references provide the Board guidance pertaining to this particular appeal:

- ▶ Section III-D.1. – Use Regulations Schedule. Manufactured Home Park is permitted only in the “MH” Manufactured Housing zoning district.
- ▶ Section III-D.6.1.(5) – Replacement of manufactured and/or mobile home in the County. The replacement of a nonconforming manufactured or mobile home within the unincorporated area of the county with a newer and/or larger manufactured home shall be permitted without rezoning the property to the “MH” Manufactured Housing district; provided the manufactured home is placed on the same property and complies with all siting requirements of the County.
- ▶ Section VII.C.3. – Expansion of outdoor nonconforming uses. A nonconforming use of premises for which a principal use is not enclosed within a building, such as a wrecking/salvage yard, a vehicle storage yard, or a vehicle and equipment sales lot, may not be expanded except in conformity with the requirements of this code.
- ▶ Section VII.G.2.e. – When abandoned. A nonconforming use shall be presumed abandoned when...the property, if a land use conducted primarily outside of a building, has been vacant or completely inactive for 24 months.
- ▶ Section VII.G.3. – Overcoming presumption of abandonment. A presumption of abandonment based solely on the length of time a land use has remained vacant or inactive (See Sec. VII.G.2.e. and VII.G.2.f.) may be rebutted upon showing, to the satisfaction of the Board of Zoning Appeals, that during such period the owner of the land or structure:

- a. Has been maintaining the land and structure in accordance with the building code and did not intend to discontinue the use; or
- b. Has been actively and continuously marketing the land or structure for sale or lease; or
- c. Has been engaged in other activities that would affirmatively prove that there was not an intent to abandon.

This memo summarizes the issues pertaining to the appeal and outlines the standards of review for appeals cases. Attached to this memo are the appeal form and supporting documentation submitted by Mr. Troutman, including the written decision of the Zoning Administrator from which the appeal is made. Also attached to this memo is the official record of the Zoning Administrator upon which the decision to deny the nonconforming use registration is based.

In rendering its decision, it is important for the Board to issue an order that summarizes the evidence and outlines the basis for its decision. Based on the presumption of correctness of the Zoning Administrator's decision, a motion to affirm the interpretation of the Zoning Administrator will be provided to the Board at the hearing. Should the appellant meet the burden of persuasion in showing that the interpretation of the Zoning Administrator was in error, the Board should make a motion in a similar form based on the appropriate findings of fact that either partially affirms, reverses wholly or partially, or modifies the interpretation of the Zoning Administrator.

Everybody should have a copy of the memo that I wrote on April 29th and then also a letter dated April 30th, which I received on May 1st from Gary Dick at Butler Rural Electric Coop. He mailed that to me. I guess he received notice of the hearing and mailed this to me. It is basically a letter explaining a copy of a map that shows a layout of the subject property. I also photocopied that map and wrote consecutive numerals on that map indicating the number of lots to kind of go along with the nature of this appeal.

The subject property is located south of 31st Street South, and is between 127th Street East and 143rd Street East. It is outlined in black on this map here. You can see that it is zoned "SF-20" Single-Family Residential and that zoning was established for this property when the county first established county wide zoning in 1985. Prior to that time there were no zoning regulations that were in affect on the subject property. The subject property, as you can see, is to this day developed with a mobile home park. That mobile home park existed prior to the County adopting the single-family residential zoning and exists in this current status as a non-conforming use. That use has never been registered with the Sedgwick County Zoning Administrators office, which brought up this appeal in the first place.

On February 24th this year, Mr. Troutman filed a request to register this property as a non-conforming mobile home park, and on that application made claim that the mobile home park contained 49 mobile home lots. These are some pictures of the subject property from 31st Street, from 137th Street, again from 137th Street from the rear of the property, from 31st from the western end of the property looking down 137th, and then I guess I was really jumping around when I did this and I went all the way back to the other corner of the property and took another picture. I think I have them out of order from where I took them.

Mr. Wiltse, the Zoning Administrator for Sedgwick County, reviewed this application for a non-conforming use registration, and determined that he could not approve the application for a 49 lot mobile home lot mobile home park. He interpreted the information that was available, that Mr. Troutman submitted with his application which is submitted and attached to your packet, and that in fact there were only 39 mobile home lots that were in existence on this property when it was first zoned single-family residential, and indicated to Mr. Troutman that he could not accept the registration for a 49

lot mobile home park, but that he could, were Mr. Troutman willing to modify his application to register a 39 lot mobile home park, he could approve that registration. Instead, Mr. Troutman appealed the denial of the non-conforming use registration, and so we are here today to hear that appeal of the denial.

Essentially at issue is not whether or not the property is a non-conforming mobile home park. The Zoning Administrator has already conceded that it is. It is the scope of the mobile home park whether it is a 39 lot or 49 lot or something other than that that the Board would make their findings based on the hearing today. There are a number of sections that pertain to this in the Zoning Code.

First, The Use Regulation Schedule, which outlines the types of uses that are permitted in each zoning district. The Use Regulations Schedule indicates that Manufactured Home Park is only permitted in the “MH” Manufactured Housing zoning district, and that it is not permitted in the “SF-20” Single-Family Residential zoning district, which this property is zoned, thereby verifying that the use is not conforming with the current zoning regulations.

Secondly, there is a description of the replacement of non-conforming manufactured homes in unincorporated areas, and it provides that if there is replacement that it then has to comply to all of the citing requirements of the current regulations.

Thirdly, the Code also has a section that deals with the expansion of an outdoor nonconforming use as opposed to a non-conforming use indoors, which would be something that was a use like a retail business that occurs inside a building; whereas, an outdoor mobile home park is outdoors. The Code indicates that those cannot be expanded except for in conformity with the code; which would mean the property would have to be appropriately zoned.

Fourth, it also indicates that properties are presumed to be abandoned if the non-conforming use is presumed inactive for 24 months. There are some provisions in there about how the property owner could overcome that presumption of abandonment. I don’t know that is really the issue that is here to be considered today but those are the regulations pertaining to non-conformities and mobile home parks that are contained in the Zoning Code, and I thought I would summarize those for you so you would not have to go searching through the entire Zoning Code Book.

WILEY: The picture you had of the water is that the lagoons the one on 31st Street?

KNEBEL: Yes, there are two sanitary sewage lagoons.

WILEY: Can you show me one you shot? Are they just fenced with barbed wired fence?

KNEBEL: I don’t recall that, I don’t remember and it is difficult to tell from the pictures whether it is barbed wire or chain-link.

MERLIN TROUTMAN, APPELLANT, 13601 E. 31ST STREET SOUTH #7, WICHITA KS 67232: I have some pictures. I don’t know just how to do this. I apologize for not getting these pictures in here sooner. I am a shade nervous. Here is a picture of three small mobile homes here.

RACHAEL PRINER, TRIPLETT, WOOLF AND GARRETSON, 2959 N. ROCK RD, STE. 300, WICHITA, KS 67226: Anything that you want to point out?

TROUTMAN: Yes.

The Board groups together at the Chairman's table and reviews diagrams and discuss pictures presented by the Appellant.

WILEY: How would you get service to these lots here?

TROUTMAN: Electric runs right up to them.

WILEY: I don't mean that I mean access.

TROUTMAN: There is a road, here, here, and here.

WILEY: Some of these look like travel trailers. I don't think travel trailers count as mobile homes.

TROUTMAN: A travel trailer goes up and down the road. A mobile home doesn't travel up and down a road and don't require tag, or license. The County says there are 5 up here. I claim there are 49 lots but I would be willing to compromise a little bit just let me have what I got.

PIRNER: Mr. Troutman, we need to clean up the record. You are pointing and motioning and the three of these people can see what you are talking about but for the recording secretary is having a hard time with that. Let's start by telling us when you took these photographs that you brought.

TROUTMAN: I took these pictures about 1 hour before I came down here, today May 6th.

PIRNER: We are looking at the REC diagram. Let's put numbers on the pictures and you can tell us how they correspond on this map R2E.

TROUTMAN: The meters the way they got, they are not numbered like this. They got 12 lots.

WILEY: There are 39 shown on this map.

TROUTMAN: Right here is this lot, and they won't let me put a mobile home on it.

WILEY: What they have done on the map they are showing where they have got their services. The Butler County Rural Electric Coop provided this map.

TROUTMAN: I own $\frac{3}{4}$ of these mobile homes out here. I am willing to compromise. I have been in real estate all my life. I should have retired a couple years ago because of 9-11 and should have given more blood but couldn't because I only have half a stomach. I contend that there are 49 lots there.

MULLEN: When did you purchase the property?

TROUTMAN: I purchased this property in November 2001.

WILEY: How many units were on the site when you bought it?

TROUTMAN: Roughly 24 units were there.

WILEY: The REC map shows 39 lots, and that is what they serviced when they put in the electric. Someone gave a layout to the REC to the site in order to get electric service to the site and that was this map here. The REC doesn't build maps. They make copies of them, but they had something to work

from. These lots that they are showing they are showing 39 lots getting service, a couple didn't have service.

TROUTMAN: They may only have 39 meters in there.

WILEY: They don't even have that many.

TROUTMAN: I had a mobile home park in Wellington back in 1960 and we had one master meter, and it operated 40 mobile homes.

WILEY: How many units have you got there today total?

TROUTMAN: There are 41 homes in there today, and they want me to pull two of them out is my understanding.

MULLEN: There are people living in those trailers now?

TROUTMAN: There are a lot of vacancies in there now. We are in a tremendous recession here in this town and everybody is doing all they can to turn it around, and I am certainly doing all I can. I have 2/3 of them empty now but I am maintaining them. I am the cheapest in town, but poor people have to have a place to live too.

WILEY: What about the fencing around the lagoons?

TROUTMAN: That is approved by the State. That is woven. It is not chain link. It is woven wire fencing.

AARON BLASE, COUNTY LAW: I want to point out that the burden is on Mr. Troutman to persuade you that the decision of Mr. Wiltse was erroneous. The key to the case is what was an existing use at the time County wide zoning took effect January 1, 1985. The concept of contemplated uses has no bearing on what was actually being used at that time. Non-conforming use rights do not attach to those contemplated uses. You have to look at what was actually used. The Zoning Code does define mobile home. It is a defined term on page 22 of the Code, and in its last sentence, it specifically says that the term mobile home does not include a recreational vehicle, and I believe recreational vehicle is also defined.

WILEY: How many units were there in 1985?

BLASE: I believe there was 39. That is giving the benefit to Mr. Troutman. In looking at the photos it appears that there were no more than 39.

GLEN WILTSE, DIRECTOR COUNTY CODE ENFORCEMENT: We based our opinion on aerials from 1983 up to 1995–1997. The numbers did not change much. It appears up in the northwest corner may have had a few more, but with no services, but based on the Butler REC there had not been services in that area. We did not have an exact layout until they sent it to us. When I based my opinion, it was on the aerials. That is how we came up with 39.

TROUTMAN: How do you determine a recreational vehicle?

WILEY: Trailers are supposed to have tags. What Mr. Blase is referencing is the mobile home. According to the Zoning Code a recreational vehicle is defined as follows: Means a unit designed as a

temporary living quarters for recreational, camping or travel use. It has a body width not exceeding 8 feet and a body length not exceeding 40 feet units may have their own power or be designed to be drawn or mounted on a automotive vehicle. Recreation vehicles shall include motor homes, travel trailers, truck trailers, truck campers, camping trailers, converted buses, house boats or other similar units as determined by the Zoning Administrator a recreation vehicle may or may not include a individual toilet or bath.

TROUTMAN: In my opinion if a person lives in a recreation vehicle then that becomes a mobile home.

WILEY: Looking at the map by the REC it appears there were 39 lots that they were going to service. They had looked at something that indicated that to them.

MULLEN: Is there a restriction of one living unit per lot. Can have three homes in one lot?

WILEY: Today there would be a size for a minimum width for a mobile home lot and a minimum depth, and I don't think that would apply in this case. It looks to me that there are 39 units to be serviced in 1985.

GIDEON: I think that is giving him the benefit of the doubt.

GIDEON moves MULLEN seconds based upon the foregoing, the Board resolves that the Denial of the nonconforming use registration by the Zoning Administrator herein be affirmed.

MOTION carries 3-0, and the Board adopts the following resolution.

BZA RESOLUTION NO. 2003-00009

**MOTION TO AFFIRM THE DENIAL OF THE NONCONFORMING USE REGISTRATION
BY THE ZONING ADMINISTRATOR**

**HAVING CONSIDERED THE ENTIRE RECORD REGARDING THIS MATTER AND
HAVING HEARD THE EVIDENCE AS PRESENTED TO THE BOARD HERE TODAY, THE
BOARD MAKES THE FOLLOWING FINDINGS:**

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d) and Section VII-I of the Wichita-Sedgwick County Unified Zoning Code, hereinafter referred to as "the Code."
2. That the Board makes the following findings of fact:
 - a) That the Zoning Administrator, pursuant to Section VII-I. of the Code, had the authority to deny the registration of a nonconformity on March 3, 2003.
 - b) That the subject property is zoned "SF-20" Single-Family Residential, which does not permit a Manufactured Home Park as a use of right.
 - c) That Section VII-A.2. of the Code provides that uses that came into existence legally and in conformance with then-applicable requirements but do not conform to all current requirements of the Code may continue to exist and be put to productive use as a

nonconforming use.

- d) That the subject property was developed with 39 manufactured homes at the time the property was first zoned "SF-20" Single-Family Residential. and came into existence legally a non-conforming use.
 - e) That Section VII-B.3. of the Code prohibits the expansion of outdoor nonconforming uses.
 - f) That permitting additional manufactured homes on the subject property over and above the 39 in existence at the time the property became a nonconforming use is not authorized by Section VII-B.3. of the Code.
 - g) That the subject property has non-conforming use rights to permit use of the property as a Manufactured Home Park, as defined by Section II-B.8.c. of the Code, for no more than 39 manufactured homes.
- 3. The Board further finds that the denial of the nonconforming use registration by the Zoning Administrator, as set forth in the letter on March 3, 2003, was correct and is supported by evidence presented at this hearing.
 - 4. The Board further finds that the appellant has not met his burden of proof to show that the interpretation was in error.

THEREFORE, BASED UPON THE FOREGOING, THE BOARD RESOLVES THAT THE DENIAL OF THE NONCONFORMING USE REGISTRATION BY THE ZONING ADMINISTRATOR HEREIN BE AFFIRMED.

Meeting adjourned at 4:17 p.m.